IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE ELEVENTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE SRI BILAL NAZKI,

THE ACTING CHIEF JUSTICE

and
THE HON'BLE DR JUSTICE G.YETHIRAJULU

WRIT PETITION NO : 4022 of 2005

Between:

Sri P.Reddeppa Reddy, s/o Baga Reddy,
r/o Puttavandla palle, Yarravaripalle Mandal, Chittoor District.

..... PETITIONER

AND

1 The Government of Andhra Pradesh rep., by its Secretary,

Home Department, Secretariat Buildings, Hyderabad.
2 The Collector & District Magistrate, Chittoor District.
3 The Superintendent, Central Prison, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a writ of Habeas Corpus directing the respondents herein to produce Sri N.V.Ramana Reddy, s/o N.Venkata Rami Reddy, aged about 38 years, resident of Diguvapalli

Yalamanda Village, Yerravaripalyam Mandal, Chittoor District, now detained in Central Prison, Hyderabad before this Honourable Court and he may be to set at liberty forthwith by declaring the order of detention passed by the 2nd respondent herein in Roc.No.C2/2174/2004, dated 30-3-2004 as illegal and unconstitutional and pass such other order or orders as this Honourable Court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner:MR.T.NIRANJAN REDDY

Counsel for the Respondents.: THE ADVOCATE GENERAL

The Court made the following :

O R D E R (Per Hon'ble the Acting Chief Justice)

This writ petition has been filed challenging the order of detention passed by the Collector on 30.3.2004.

2. Petitioner is a relation of the detenu. It is submitted that the order of detention was passed on 30.3.2004. However, it was executed on 12.2.2005, almost after one year of its passing. The learned Senior Counsel appearing for the detenu submits that since the order of detention has been executed after one year of its passing, therefore, the District Magistrate was not aware of the activities of the detenue after 30.3.2004. Therefore, all the instances given as grounds of detention have to be taken as stale grounds. He submits that if the failure of detaining a person in execution of order of detention, is attributable to the respondents themselves, then a person cannot be detained after one year of passing of the order of detention. He relies on a judgment of the Supreme Court in SMF SULTANA ABDUL

KADER v. JT. SECY., TO GOVT. OF INDIA. Paragraph No.2 of the judgment is reproduced:

> "It is not necessary to state the facts leading to the passing of the detention order as we are inclined to allow this petition on the second ground raised by Mr K.K.Mani, learned counsel for the petitioner. The order of detention was passed on 14.3.1996. The petitioner came to be detained on 7.8.1997. The contention raised by Mr Mani is that there was undue delay in execution of the order and that clearly indicates that there was no genuine satisfaction on the part of the detaining authority regarding the necessity of immediate detention of the petitioner in order to prevent him from committing and continuing to commit the prejudicial activity alleged against him. In reply to this contention raised by the petitioner what the detaining authority has stated in the counter-affidavit is that the detention order could not be executed immediately as the petitioner was absconding. In para 12 of the counter-affidavit field by the Joint Secretary to the Government of India it is stated as under:
>
> "Continuous efforts were made by the State Police on the following dates to apprehend the detenu—
>
> 25-4-1996, 20-5-1996, 30-6-1996, 23-7-1996, 28-8-1996, 24-9-1996, 15-10-1996, 26-11-1996, 18-12-1996 & 20-12-1996. 17-1-1997, 27-2-1997, 26-3-1997, 24-4-1997, 29-5-1997, 29-6-1997, 25-7-1997 and 7-8-1997.
>
> But for the sustained efforts by the police authorities at Nagore, he would not have been apprehended now."
>
> The Joint Secretary has not explained why no attempt was made from 14-3-1996 to 25-4-1996 to apprehend the detenu and put him under detention even though the detention order was passed on 14-3-1996. It further appears that no attempt was made to see that the petitioner was immediately apprehended. No serious efforts were made by the police authorities to apprehend the detenu. Only once in a month the police had tried to find out the petitioner. It is also not stated where they looked for him and what inquiries were made to find out his whereabouts. The Joint Secretary himself had made no effort to find out from the police authority as to why they were not able to apprehend the petitioner. No material has been produced on the basis of which it can be said that the police authorities had made reasonable efforts to locate the petitioner and apprehend him and yet they were not successful

in finding him out. There is also no material to show that the detaining authority had made any serious attempt during this whole period of delay to find out if the detention order was executed or not. Thus, the delay in execution of the detention order remains unexplained. The unreasonable delay in executing the order creates a serious doubt regarding the genuiness of the detaining authority as regards the immediate necessity of detaining the petitioner in order to prevent him from carrying on the prejudicial activity referred to in the grounds of detention. We are of the opinion that the order of detention was passed by the detaining authority not in lawful exercise of the power vested in him. We, therefore, allow this petition, set aside and quash the order of detention and direct that the petitioner be set at liberty forthwith unless his presence is required in jail in connection with any other case."

3 . The learned Senior Counsel further submits that in terms of Section 7 of The Andhra Pradesh Prevention of Dangerous Activities of Boot Leggers, Dacoits, Drugoffenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986, (for short 'the Act') the District Magistrate is supposed to take steps in order to implement the order, if the detenu absconds. Section 7 of the Act, is reproduced as under:

"**Power in relation to absconding persons**:

1. If the government have, or an officer mentioned in sub-section (2) of Section 3, has reason to believe that a person in respect of whom, a detention order has been made has absconded or is concealing himself so that the order cannot be executed then the provisions of Sections 82 to 86 (both inclusive) of the code of Criminal Procedure, 1973, shall apply in respect of such person and his property, subject to the modifications mentioned in this sub-section and irrespective of the place where such person ordinarily resides, the detention order made against him shall be deemed to be a warrant issued by a competent Court. Where the detention order is made by the Government, an Officer not below the rank of District Magistrate or Commissioner or police authorized by the Government in this behalf or where the detention order is

made by an officer mentioned in sub-section (2) of Section 3, such officer, as the case may be, shall irrespective of his ordinary jurisdiction be deemed to be empowered to exercise all the powers of the competent Court under Sections 82, 83, 84 and 85 of the said Code for issuing a proclamation for such person and for attachment and sale of his property situated in any part of the State and for taking any other action under the said sections. An appeal from any order made by any such officer rejecting an application for restoration of attached property shall lie to the Court of Sessions, having jurisdiction in the place where the said person ordinarily resides, as provided in Section 86 of the said Code.

2. (a) Notwithstanding anything contained in sub-section (1), if the Government have, or an Officer mentioned in sub-section (2) of Section 3 has reason to believe that a person in respect of whom a detention order has been made has absconded or is concealing himself so that the order cannot be executed, the Government or the Officer, as the case may be, may by order notified in the Andhra Pradesh Gazette, direct the said person to appear before such officer, at such place and within such period as may be specified in the order.

(b) If such person fails to comply with such order, unless he proves that it was not possible for him to comply therewith, and that he had within the period specified in the order, informed the officer mentioned in the order of the reasons which rendered compliance therewith impossible and of his whereabouts, or proves that it was not possible for him to so inform the officer mentioned in the order, he shall, on conviction, be punished with imprisonment for a term which may extend to one year, or with fine, or with both.

(c) Notwithstanding anything contained in the said Code, every offence under clause (b) shall be cognizable.

4. The learned Government Pleader submits that the District Forest Officer had written a letter to the Collector on 29.7.2004 for taking steps under Section 7 of the Act to apprehend the detenu and two meetings were also held. But record does not show that any actual

steps under Section 7 of the Act, were taken to detain the detenu.

5. The learned Senior counsel for the petitioner in this connection has drawn our attention to the judgment of Supreme Court in P.U.IQBAL v. UNION OF INDIA[2]. Paragraphs 17 and 18 of the judgment are reproduced as under:

> "17. See also Harnek Singh v. State of Punjab, (1982) 1 SCC 116 : (AIR 1982 SC 682) and Syed Farooq Mohammad v. Union of India, (1990)3 s SCR 240 : (AIR 1990 SC 1597).
>
> 18. It is manifestly clear from a conspectus of the above decisions of this Court, that the law promulgated on this aspect is that if there is unreasonable delay between the date of the order of detention and the date of arrest of the detenu, such delay unless satisfactorily explained throws a considerable doubt on the genuiness of the requisite subjective satisfaction of the detaining authority in passing the detention order and consequently render the detention order bad and invalid because the 'live and proximate link' between the grounds of the detention and the purpose of detention is snapped in arresting the detenu. A question whether the delay is unreasonable and stands unexplained depends on the facts and circumstances of each case."

6. Following the principles laid down by the Supreme Court in the judgments referred above, on the ground of delay in execution of the order of detention, we quash the order of detention and allow the writ petition and direct that the detenu shall be released from custody forthwith if not required in any other case.

BILAL NAZKI, HACJ

DR.G.YETHIRAJULU,J

AVS

DATE:11.04.2005

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Secretary Government of Andhra Pradesh,

Home Department, Secretariat Buildings, Hyderabad.
2 The Collector & District Magistrate, Chittoor District.
3 The Superintendent, Central Prison, Hyderabad.

4. The Advocate General, A.P. High court

Building, Hyderabad (OUT).

5. 2 CD copies

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